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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA, ) Case No. 18-CR-00258 EJD  
15 Plaintiff, )  
16 v. ) UNITED STATES' RESPONSE TO DOW JONES &  
17 ELIZABETH HOLMES and ) COMPANY'S MOTION TO UNSEAL JUDICIAL  
18 RAMESH "SUNNY" BALWANI, ) RECORDS  
19 Defendants. )  
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1 On March 15, 2022, limited intervenor Dow Jones & Company filed a Motion to Unseal Judicial  
 2 Records. ECF No. 1353 (“Motion”). Dow Jones’ Motion seeks to unseal (1) identifying titles of  
 3 17 docket entries filed under seal and reflected on the Court’s docket only as “SEALED RECORD”;  
 4 (2) certain court records related to Defendant Elizabeth Holmes’ noticed Federal Rule of Criminal  
 5 Procedure 12.2 defense; and (3) two sealed hearings on November 22, 2021, and December 28, 2021.  
 6 *Id.* at 2.

7 For the reasons stated in its initial brief (*see* ECF No. 929), the government does not oppose  
 8 Dow Jones’ Motion on the first two topics, namely unsealing the *titles* of docket entries currently  
 9 identified solely by the descriptor “SEALED RECORD” and court records that contain facts  
 10 overlapping with Ms. Holmes testimony during her direct examination relevant to her then-expected  
 11 Rule 12.2 defense (*see United States v. Holmes*, 11/29/2021 Trial Transcript at 7846:11–7879:21).<sup>1</sup> The  
 12 government understands Dow Jones is not currently seeking materials filed as “SEALED RECORDS”  
 13 that do not relate to Ms. Holmes’ noticed Rule 12.2 defense, and the government would oppose  
 14 unsealing the *substance* of certain of those records to the extent they may relate to an ongoing grand jury  
 15 investigation. *Cf.* ECF 1353-1 at 3 (citing several under seal docket entries). The Ninth Circuit has  
 16 described the “long-established policy of nondisclosure” of materials relating to grand jury  
 17 investigations, which supports the Court’s sealing of those materials. *See, e.g., United States v.*  
 18 *Dynavac, Inc.*, 6 F.3d 1407, 1411 (9th Cir. 1993) (holding that Fed. R. Crim. P. 6(e)’s “policy of  
 19 nondisclosure seeks to: (1) prevent the escape of prospective indictees, (2) insure the grand jury of  
 20 unfettered freedom in its deliberations, (3) impede the subornation of perjury and tampering of witnesses  
 21 by targets of the investigation, (4) encourage forthrightness in witnesses without fear of retaliation, and  
 22 (5) act as a shield for those who are exonerated by the grand jury.” (citations omitted)).

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<sup>1</sup> Defendant Ramesh “Sunny” Balwani opposes further unsealing of these records asserting that he is in the same position as his co-Defendant Holmes before she chose whether to present her Rule 12.2 defense at her trial. ECF No. 1369 at 3. But that is illogical. The Court did not want facts publicized by the press before Ms. Holmes chose whether or when to present her Rule 12.2 defense in her trial; by contrast, it is highly unlikely that Ms. Holmes’ noticed Rule 12.2 defense and the facts underlying it will arise in Mr. Balwani’s trial.

The government opposes Dow Jones' Motion's third request to unseal transcripts of hearings on November 22, 2021, and December 28, 2021, for reasons stated in the government's filing opposing wholesale unsealing of juror questionnaires (*see* ECF No. 1033 at 7–9; ECF No. 1108 at 6–8), including respect for juror privacy, encouraging juror candor, and security concerns. The government further opposes unsealing of these transcripts for the well-reasoned analysis the Court has previously given. *See* ECF No. 1151; *United States v. Holmes*, 12/28/2021 Trial Transcript at 9382.

DATED: March 22, 2022

Respectfully submitted,

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